IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.1053 OF 1987

Sahyadri Sahakari Sakhar Karkhana Ltd. & anr. ..Plaintiffs.
Vs.
Vasant B. Shah & anr. ..Defendants.

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Mr. Deepan Desai i/b Kanga & Co. for the Plaintiffs.
None for the Defendants.

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CORAM: DR. D.Y. CHANDRACHUD, J.

24th August, 2006.

P.C. :

1. The Plaintiffs have instituted a suit for the recovery of an amount of Rs.1,79,088/- by way of damages with further interest on the said sum at the rate of 18% per annum from the date of the institution of the suit until payment or realization. The Plaintiffs are co-operative societies registered respectively under the provisions of the Bombay Co-operative Societies Act, 1925 and of the Maharashtra Co-operative Societies Act, 1960. The Co-operative Sugar Factories in the State require gunny bags for the bagging of sugar produced by the factories concerned. The Second Plaintiff for and on behalf of the First Plaintiff invited offers for the supply of

gunny bags. The First Defendant submitted his offer dated 3rd July, 1984 for the supply and sale of an aggregate quantity of 1500 bales of new 'A' twill gunny bags on the terms and conditions contained therein. The offer was accepted by the Second Plaintiff by a letter dated 5th July, 1984. By the said letter the Second Plaintiff requested the First Defendant to furnish a bank guarantee in accordance with the terms of the contract. Dispatches of the goods were to be made by the First Defendant in accordance with the programme that was to be informed by the Second Plaintiff to the First Defendant. By a letter dated 5th July, 1984 the First Defendant, while confirming the receipt of the said order, stated that he would arrange for the furnishing of a requisite bank guarantee. However, the First Defendant stated in the letter that he would inform his principal viz. the Second Defendant to dispatch the goods in accordance with the programme. The case of the Plaintiffs is that they were not informed before the contract was entered into by the First Defendant that he was acting for and on behalf of any principal and it was for the first time by his letter dated 5th July, 1984 that the First Defendant stated that he was acting on behalf of the Second Defendant. By a letter dated 26th July, 1984 the First Defendant informed the First Plaintiff of the

receipt of the order for supply of gunny bags and that the First Plaintiff would be in receipt of the bags from the Second Defendant on behalf of the First Defendant. On 3rd September, 1984, the Second Plaintiff informed the First Defendant that the bank guarantee as required had still not been furnished. However, in order to obviate any delay, dispatch instructions were furnished to the First Defendant. According to the instructions, the First Defendant was required to dispatch and supply to the First Plaintiff 90 bales out of the quantities ordered in August, 1984. The First Defendant is stated to have failed and neglected to dispatch the goods that were ordered. The defence of the First Defendant in a letter dated 4th December, 1984 was that he was acting on behalf of the Second Defendant. The Second Plaintiff in its letter dated 27th December, 1984 stated that the contract had been concluded with the First Defendant and not with the Second Defendant.

2. The suit has been instituted for the recovery of the difference in price between the rate at which the First Defendant had contracted to sell the gunny bags to the Plaintiffs and the rate at which the First Plaintiff was required to purchase the goods in the market upon a breach of the contract by the First Defendant.

3. The writ of summons has been served on the Defendants. A written statement has been filed by the First Defendant which is, however, under objection. Be that as it may, in the interests of justice, the written statement has been perused. From the written statement it would appear that the defence of the First Defendant is that he was acting at all material times for and on behalf of the Second Defendant and that there was no conclusive and binding contract. There is no merit in either of the two defences. Upon the letter of the Second Plaintiff dated 5th July, 1984 accepting the offer of the First Defendant dated 3rd July, 1984, a concluded and binding contract came into existence between the parties. The First Defendant submitted the offer dated 3rd July, 1984 on behalf of himself and not on behalf of the Second Defendant. There is no merit in the objection that has been raised to the jurisdiction of the Court to entertain and try the suit. The offer of the First Defendant was received by the Second Plaintiff at Mumbai. The Second Plaintiff dispatched the letter of acceptance from Mumbai. A material part of the cause of action has arisen within the jurisdiction of this Court. Leave under Clause 12 has been granted by this Court on 27th January, 1987.

4. Counsel appearing for the Plaintiffs has tendered a compilation of original documents on the record. The compilation is taken on the record. The Defendants have remained absent. The claim has been duly proved.

5. In these circumstances, the suit shall have to be decreed and is accordingly decreed in the amount of Rs.1,79,088/- as against the First Defendant. The Plaintiffs shall be entitled to interest at the rate of 12% per annum from the date of the institution of the suit until payment or realization.